

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Calling Party Pays Service Offering
 in the Commercial Mobile Radio Services

WT Docket No. 97-207

REPLY COMMENTS OF
THE COALITION TO ENSURE RESPONSIBLE BILLING

The Coalition to Ensure Responsible Billing ("CERB"),¹ by its counsel and pursuant to the Notice of Proposed Rulemaking in the above-captioned proceeding,² respectfully submits the following reply comments. CERB restricts these reply comments to the need, as demonstrated by a range of commenters, for the Federal Communications Commission ("Commission") to implement mandatory local exchange carrier ("LEC") billing and collections in order to ensure the viability of Calling Party Pays ("CPP"). While CPP is beneficial to consumers and to competition, it cannot be successful without mandatory, non-discriminatory LEC billing and collections for calling party charges. Therefore, the Commission should impose such requirements on LECs for CPP. The comments of many other parties support the need for such a requirement, and show that the Commission has authority to implement one.³ While CERB limits its reply comments to the foregoing, it hereby reiterates its position that billing name and address ("BNA") should be classified as an unbundled

¹ The Coalition to Ensure Responsible Billing ("CERB") comprises billing clearinghouses that process more than 90 percent of all billing submitted to local telephone companies by third parties. These billing clearinghouses perform billing and collections functions for competitive providers of basic and enhanced telecommunications services.

² *In the Matter of Calling Party Pays Service Offering in the Commercial Mobile Radio Services*, WT Docket No. 97-207, Notice of Proposed Rulemaking, FCC 99-137 (released July 7, 1999).

³ See, e.g. Comments of AirTouch Communications, *In the Matter of Calling Party Pays Service Offering in the Commercial Mobile Radio Services*, WT Docket No. 97-207, at 11-13, 25-31 (Sept. 17, 1999); Comments of Pilgrim Telephone at 14-21, 22-25; Comments of the Personal Communications Industry Association ("PCIA") at 33-34, 44-51; Comments of America One Communications at 8-10; Comments of Nevadacom at 4-6; Comments of Nextel Communications at 12; Comments of Voicestream Communications at 5-9.

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network element (“UNE”), but that doing so is insufficient to facilitate effective billing and collections for CPP.⁴

I. Comments Demonstrate the Need for Mandatory LEC Billing and Collections for CPP

Comments in this proceeding demonstrate that there are no feasible alternatives to mandatory, non-discriminatory LEC billing and collections for CPP. The local telephone bill is the only ubiquitous cost-effective, consumer-convenient CPP billing mechanism. Further, if LEC billing and collections is not mandatory, LECs who provide commercial mobile radio services (“CMRS”) through affiliates will use the advantages associated with the LEC bill to the detriment of competing CMRS providers. Worse, LECs could decide not to bill for CPP at all.

The local telephone bill is the most economically efficient billing mechanism for CPP charges. In fact, there are no viable alternatives.⁵ The Personal Communications Industry Association (“PCIA”), in an extensive economic study on the costs of different potential CPP billing and collections mechanisms (“PCIA Study”), demonstrates the efficiencies of the local telephone bill. Specifically, the LEC bill is the only ubiquitous, nationwide consumer bill, and consumers recognize and prefer to receive charges on this consolidated bill.⁶ In addition, the incumbent LECs possess tremendous economies of scale that greatly reduce their billing costs.⁷ LECs already generate local bills for their customers, and the incremental cost of adding CPP information to pre-existing bills would be de minimis.⁸

While the LEC bill possesses many unique characteristics that make it the clear choice for CPP, commenters suggested at least three alternatives to the LEC bill: direct billing, credit card billing, and non-

⁴ See Comments of CERB at 16.

⁵ See Comments of CERB at 3; *see also* Comments of AirTouch, attached Economic study at 9-14.

⁶ See Comments of CERB at 3; *see also* Federal Communications Commission Report by Alexander Belinfante, *Telephone Subscribership in the United States*, at 2 (Released October 1999) (finding that as of 1999, 94.4% of all households subscribe to telephone service).

⁷ See Comments of PCIA at 40, attached PCIA Study at Figure 5.

⁸ See *Id.* at 40, attached PCIA Study at 36, 3.3.3.3.

LEC billing by a third party clearinghouse. None of these options will result in an effective, nationwide CPP system.

Direct Billing. Direct billing by CMRS providers, which has been proposed as an alternative to LEC mandated billing,⁹ is cost prohibitive compared with LEC billing.¹⁰ According to the PCIA Study, it costs between \$1.50 and \$3.50 to produce a direct monthly bill to a customer. The average duration of a CMRS call is under two minutes, and the average revenue per CMRS call is only \$.40 to \$.80.¹¹ Also, the CMRS provider that bills for the call is determined by the person who receives the call, not the consumer placing the call, meaning that a customer may use numerous CMRS providers each month. Therefore, in many cases it is unlikely that a CMRS provider would bill enough calls for an individual CPP customer to cover the costs of producing that customer's monthly bill. Further, CMRS providers would have to obtain billing name and address information from the LEC each time they billed a particular customer, thereby incurring an additional cost.¹² Not only would the high cost of direct billing make it virtually impossible for an unaffiliated CPP provider to remain viable, providers who were forced to use direct billing would suffer an enormous competitive disadvantage compared with LEC affiliates that have access to the cost-effective LEC bill.

The high cost of direct billing is not the only reason it is not feasible. In addition, as America One Communications Inc. ("America One") and the United States Cellular Corporation ("USCC") note, direct billing will result in consumers receiving many bills for minuscule amounts.¹³ The confusion and hassle associated with numerous small bills from companies the consumer does not recognize will result in higher uncollectible rates, creating a disincentive for CMRS providers to offer CPP billing. Further, the increased number of bills will discourage consumers from using CPP as a billing option.¹⁴ Again, a competitive issue

⁹ See, e.g., Comments of U S West at 21.

¹⁰ See, e.g., Comments of Sprint Corporation at 6-7.

¹¹ See Comments of PCIA at 37, 43.

¹² See Comments of Sprint at 7, fn. 21; see also Comments of AirTouch, attached Economic study at 12, fn. 21 ("It is our understanding that companies making BNA queries for casual calling cannot obtain the BNA database to use for constructing their own databases. [W]hen a name is obtained from a particular billing query, this name is to be used only for generating a single bill and is not supposed to be used for creating a new database.").

¹³ See Comments of the United States Cellular Corporation ("USCC") at 9; Comments of America One at 8.

¹⁴ See Comments of AirTouch, attached Economic study at 7-8.

arises where LEC affiliates who bill on the LEC bill benefit from higher consumer recognition of the LEC bill, less confusion, and therefore fewer complaints and greater collectibility rates.

Credit Card Billing. Credit cards, proposed by Cincinnati Bell Telephone Company (“Cincinnati Bell”) and U S West Communications (“U S West”) as a viable billing alternative,¹⁵ also suffer from fatal flaws in the CPP context. The credit card is not ubiquitous, and it is a cumbersome payment device on a per-call basis. The most recent Census Bureau statistics show that as of 1995, approximately one-third (1/3) of American families *did not* have general purpose credit cards. Significantly, lower income consumers were less likely than other Americans to possess a credit card: only 26 percent of families earning under \$10,000 had credit cards, and only 53 percent of families earning between \$10,000 and \$24,999 used general purpose credit cards.¹⁶ In addition, it is extremely cumbersome for consumers to use a credit card every time they desire to place a CPP call. Consumers will be unwilling to locate their credit cards and read off the whole account number, especially to make a brief call.

Billing Clearinghouse Model. A third alternative that has been proposed by a number of LECs is direct CPP billing conducted by billing clearinghouses.¹⁷ CERB agrees with PCIA and Sprint Corporation (“Sprint”) that national billing clearinghouses are not an economically viable alternative to mandatory LEC billing and collections for CPP calls.¹⁸ While use of such a clearinghouse or clearinghouses may provide greater economies of scale than individual direct billing, it presents a number of problems. Billing through a clearinghouse directly to a consumer, without using the local phone bill, does not replicate the efficiencies of the LEC bill. Further, the use of billing clearinghouses for CPP does not necessarily resolve the problem of consumers having to deal with more than one bill, nor does it resolve the resulting uncollectible problems. While it is true that some billing aggregators prepare direct bills for telecommunications providers, such a service is only feasible with large charges or where a subscription-type relationship exists. Thus, while national billing clearinghouses are a more attractive option than direct billing by CMRS providers, they are still not a viable alternative to mandatory LEC billing and collections.

¹⁵ See, e.g., Comments of Cincinnati Bell at 6-7; Comments of U S West at 21.

¹⁶ U.S. Census Bureau, *Statistical Abstract of the United States* at 524 (Oct. 13, 1998).

¹⁷ See Comments of SBC at 8; Comments of Bell Atlantic at 6; Comments of U S West at 21; Comments of Cincinnati Bell at 6-7; Comments of GTE at 33.

¹⁸ See Comments of PCIA at 40-41, attached PCIA Study at figure 6; Comments of Sprint at 8-9.

Considering the critical role LEC billing and collections will play in the implementation of CPP, the Commission must ensure that this billing option is available. Although LECs, such as BellSouth, argue that they should be allowed to voluntarily enter into CPP billing and collections arrangements with CMRS providers,¹⁹ a number of commenters agree that LECs have a reason to act in an anti-competitive manner in these negotiations or to decide not to offer CPP billing and collections at all.²⁰ First, in many instances, LEC affiliates also offer CMRS services. Thus, the CMRS providers now seeking mandatory LEC billing and collections are potential LEC competitors. Second, LECs may view CMRS as a competitive threat to their landline services. An example of this is SBC Communication's ("SBC") refusal to provide CPP billing and collections for AirTouch Communications ("AirTouch").²¹ LECs have an incentive to set the terms and conditions of CPP billing and collections even to the point where they drive CMRS providers out of business.²²

II. Comments Demonstrate that the Commission has Title I Ancillary Jurisdiction to Impose Mandatory LEC Billing and Collections for CPP

The Commission should mandate LEC billing and collections for CPP pursuant to its Title I ancillary jurisdiction. While many parties support this assertion, some parties claim that requiring LEC billing and collections, even in this limited context, is contrary to the Commission's Detariffing Order. In the Detariffing Order, the Commission declined to require incumbent LECs to offer billing and collection services to interexchange carriers ("IXCs").²³ CERB agrees with other commenters that the facts of the Detariffing Order are distinguishable from the facts upon which a CPP decision will be made. Further, the Commission may

¹⁹ See Comments of BellSouth at 14; *see also* Comments of Bell Atlantic at 5; Comments of U S West at 22 ("It would be terrible public policy for the Commission to hold LECs' billing to their own customers hostage to a requirement that they bill for others when they bill for themselves or their affiliated companies."); Comments of GTE at 34 (arguing that LECs will have a strong incentive to negotiate billing and collection agreements for CPP because the LECs will need similar agreements for their affiliates in other LECs' territories. CERB argues instead that while LECs with substantial bargaining power will negotiate fair agreements with other LECs, LECs will be reluctant to do the same with unaffiliated CMRS providers.).

²⁰ See Comments of AT&T at 8; Comments of AirTouch at 23, attached Economic study at 19-20.

²¹ See Comments of AirTouch at 17-18.

²² See Comments of PCIA at 43.

²³ Detariffing of Billing and Collection Services, CC Docket 85-88, Report and Order, 102 FCC 2d 1150 (¶¶ 37, 39) (1986) ("Detariffing Order"), *recn. denied*, 1 FCC Rcd 445 (1986).

exercise Title I ancillary jurisdiction to promote or protect any statutory purpose, despite the Commission's decision in the Detariffing Order not to regulate billing and collections under Title II of the Telecommunications Act of 1996 ("Act").

America One and AirTouch point up some of the distinctions between the issues surrounding the Detariffing Order, and the CPP billing and collections issues currently before the Commission.²⁴ In the Detariffing Order, the Commission focused its analysis on the potential for competition in the billing services market rather than on the possibility of anti-competitive LEC behavior for a service, such as CPP, that depends on the LEC bill.²⁵ Since the Detariffing Order, Congress has acknowledged the likelihood that the Regional Bell Operating Companies ("RBOCs"), when permitted to enter the long distance market, would inappropriately favor their own IXC affiliates. Thus, Congress enacted Section 272 of the Act, which prevents the RBOCs from discriminating between their own IXC affiliates and unaffiliated IXCs in the provision of "goods, services, facilities, and information."²⁶ In interpreting the Act, the Commission found that Section 272 was intended to protect competition in new markets "from the BOCs' ability to use their existing market power in local exchange services to obtain an anti-competitive advantage in those new markets the BOCs seek to enter."²⁷ The Commission recognized that the provision of billing and collections was a "service" that RBOC affiliates may use to their advantage, and thus specified that billing and collections was subject to a non-discrimination requirement.²⁸

The Commission should apply the same reasoning in the case of CPP. In the absence of Commission action, RBOCs will seek to use their market power in the local exchange market to favor their wireless affiliates. One mechanism that RBOCs will use in this manner is billing and collections for CPP calls. An RBOC can promote its wireless affiliate by offering billing and collections exclusively to that affiliate, or by offering the affiliate better terms and conditions. In order to prevent this result, RBOCs should be required to offer non-discriminatory billing and collections to all providers of CPP.

²⁴ See Comments of America One at 9; Comments of AirTouch at 22-24.

²⁵ See Detariffing Order at ¶ 37.

²⁶ 47 U.S.C. Section 272(c)(1).

²⁷ Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (¶ 6) (1996).

²⁸ Id. at ¶ 217.

Furthermore, while Congress treated non-RBOC incumbent local exchange carriers differently for purposes of the Act, the Commission should treat all incumbent LECs the same for purposes of requiring billing and collections on the local telephone bill for CPP. Any incumbent LEC has sufficient incentive and opportunity to leverage its market power in the local exchange market to gain an unfair advantage in the market for CPP. LECs can control access to the CPP market through access to the local telephone bill, without which CPP is not viable.

As to the requirement that the exercise of Title I jurisdiction “be directed at protecting or promoting a statutory purpose,”²⁹ CERB has noted that perpetuating widespread communications and promoting competition in telecommunication services are such purposes.³⁰ CERB further agrees with commenters that CPP will promote the statutory purposes of promoting the “safety of life and property through the use of wire and radio communications,”³¹ eliminating “market entry barriers for entrepreneurs and other small businesses in the provision of...telecommunications services and information services,”³² and “increasing consumer telecommunications choices.”³³

²⁹ See Detariffing Order at ¶ 37.

³⁰ See CERB Comments at 14 (citing 47 U.S.C. Section 151 and H.R. Conf. Rep No. 104-458, at 1 (1996) *reprinted in* 1996 U.S.C.C.A.N. 10).

³¹ See Comments of Nevadacom at 4 (citing 47 U.S.C. Sections 151, 254).


³² Id. (citing 47 U.S.C. Section 257).

³³ See Comments of America One at 9 (citing 47 U.S.C. Section 151).

III. Conclusion

For the above reasons, CERB submits that comments filed in this proceeding demonstrate that imposing mandatory, non-discriminatory LEC billing and collections for CPP services is warranted, necessary, and within the Commission's authority. Accordingly, CERB urges the Commission to mandate LEC billing and collections for CPP.

Respectfully submitted,



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October 18, 1999

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of October, 1999, a copy of the foregoing Comments of the Coalition to Ensure Responsible Billing will be hand delivered to:

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